

## § 308.1

308.2 Performance awards.

308.3 Planning performance awards.

AUTHORITY: 42 U.S.C. 3151; 42 U.S.C. 3154a; 42 U.S.C. 3154b; Department of Commerce Delegation Order 10-4.

SOURCE: 71 FR 56675, Sept. 27, 2006, unless otherwise noted.

### § 308.1 Use of funds in Projects constructed under projected cost.

(a) If the Assistant Secretary determines before closeout of a construction Project funded under parts 305 or 307 of this chapter that the cost of the Project, based on the designs and specifications that were the basis of the Investment Assistance, has decreased because of a decrease in costs, EDA may in its discretion approve the use of the excess funds (or a portion of the excess funds) by the Recipient to:

(1) Increase the Investment Rate of the Project to the maximum percentage allowable under § 301.4 of this chapter for which the Project was eligible at the time of the Investment award; or

(2) Further improve the Project consistent with its purpose.

(b) EDA, in its sole discretion, may use any amount of excess funds remaining after application of paragraph (a) of this section for other eligible Investments.

(c) In the case of Projects involving funds transferred from other Federal Agencies, EDA will consult with the transferring Agency regarding the use of any excess funds.

### § 308.2 Performance awards.

(a) A Recipient of Investment Assistance under parts 305 or 307 of this chapter may receive a performance award in connection with an Investment made on or after the date of enactment of section 215 of PWEDA in an amount not to exceed ten (10) percent of the amount of the Investment award.

(b) To receive a performance award, a Recipient must demonstrate Project performance in one (1) or more of the areas listed in this paragraph, weighted at the discretion of the Assistant Secretary:

(1) Meet or exceed the Recipient's projection of jobs created;

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(2) Meet or exceed the Recipient's projection of private sector capital invested;

(3) Meet or exceed target dates for Project start and completion stated at the time of Investment approval;

(4) Fulfill the application evaluation criteria set forth in § 301.8 of this chapter; or

(5) Demonstrate other unique Project performance characteristics as determined by the Assistant Secretary.

(c) A Recipient may receive a performance award no later than three (3) years following the Project's closeout.

(d) A performance award may fund up to one hundred (100) percent of the cost of an eligible Project or any other authorized activity under PWEDA. For the purpose of meeting the non-Federal share requirement of PWEDA or any other statute, the amount of a performance award shall be treated as non-Federal funds.

(e) The applicable FFO will set forth the requirements, qualifications, guidelines and procedures for performance awards to be made during the applicable fiscal year, with all performance awards being subject to the availability of funds.

[71 FR 56675, Sept. 27, 2006, as amended at 75 FR 4265, Jan. 27, 2010]

### § 308.3 Planning performance awards.

(a) A Recipient of Investment Assistance awarded on or after the date of enactment of section 216 of PWEDA for a Project located in an EDA-funded Economic Development District may, at the discretion of the Assistant Secretary, receive a planning performance award in an amount not to exceed five (5) percent of the amount of the applicable Investment award if EDA determines before closeout of the Project that:

(1) The Recipient, through the Project, actively participated in the economic development activities of the District;

(2) The Project demonstrated exceptional fulfillment of one (1) or more components of, and is otherwise in accordance with, the applicable CEDS, including any job creation or job retention requirements; and

(3) The Recipient demonstrated exceptional collaboration with federal,

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State and local economic development entities throughout the development of the Project.

(b) The Recipient shall use the planning performance award to increase, up to one hundred (100) percent, the Federal share of the cost of a Project under this chapter.

(c) The applicable FFO may set forth additional requirements, qualifications and guidelines for planning performance awards.

[71 FR 56675, Sept. 27, 2006, as amended at 73 FR 62869, Oct. 22, 2008]

### PART 309—REDISTRIBUTIONS OF INVESTMENT ASSISTANCE

Sec.

309.1 Redistributions under parts 303, 305 and 306.

309.2 Redistributions under part 307.

AUTHORITY: 42 U.S.C. 3154c; 42 U.S.C. 3211; Department of Commerce Delegation Order 10-4.

SOURCE: 71 FR 56675, Sept. 27, 2006, unless otherwise noted.

#### § 309.1 Redistributions under parts 303, 305 and 306.

(a) *General.* Except as provided in paragraph (b) of this section, a Recipient of Investment Assistance under parts 303, 305 or 306 of this chapter may directly expend such Investment Assistance or, with prior EDA approval, may redistribute such Investment Assistance in the form of a subgrant to another Eligible Recipient that qualifies for Investment Assistance under the same part of this chapter as the Recipient, to fund required components of the scope of work approved for the Project. All subgrants made pursuant to this section shall be subject to the same terms and conditions applicable to the Recipient under the original Investment Assistance award and must satisfy the requirements of PWEDA and of this chapter.

(b) *Exception.* A Recipient may not make a subgrant of Investment Assistance received under parts 303 or 305 of this chapter to a for-profit entity.

#### § 309.2 Redistributions under part 307.

(a) A Recipient of Investment Assistance under part 307 of this chapter may

directly expend such Investment Assistance or, with prior EDA approval, may redistribute such Investment Assistance in the form of:

(1) A subgrant to another Eligible Recipient that qualifies for Investment Assistance under part 307 of this chapter; or

(2) Pursuant to part 307, subpart B, a loan or other appropriate assistance to non-profit and private for-profit entities.

(b) All redistributions of Investment Assistance made pursuant to this section shall be subject to the same terms and conditions applicable to the Recipient under the original Investment Assistance award and must satisfy the requirements of PWEDA and of this chapter.

### PART 310—SPECIAL IMPACT AREAS

Sec.

310.1 Special Impact Area.

310.2 Pressing need; alleviation of unemployment or underemployment.

AUTHORITY: 42 U.S.C. 3154; Department of Commerce Organization Order 10-4.

SOURCE: 71 FR 56675, Sept. 27, 2006, unless otherwise noted.

#### § 310.1 Special Impact Area.

Upon the application of an Eligible Recipient, and with respect to that Eligible Recipient's Project only, the Assistant Secretary may designate the Region which the Project will serve as a Special Impact Area if the Eligible Recipient demonstrates that its proposed Project will:

(a) Directly fulfill a pressing need; and

(b) Be useful in alleviating or preventing conditions of excessive unemployment or underemployment, or assist in providing useful employment opportunities for the unemployed or underemployed residents of the Region.

[73 FR 62869, Oct. 22, 2008]

#### § 310.2 Pressing need; alleviation of unemployment or underemployment.

(a) The Assistant Secretary may find a pressing need to exist if the Region which the Project will serve:

(1) Has a unique or urgent circumstance that would necessitate